

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
SEP 13 2013

OFFICE OF
MANAGING DIRECTOR

David Tillotson
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Re: (Financial Hardship; 47 U.S.C. § 159(c)(1), 31
U.S.C. § 3717, 47 C.F.R. §§ 1.1164, 1.1166)
Licensee/Applicant: Eko Media Group, Inc.
Station: WNWK (AM)
FRN: 0020055273
Fees: Fiscal Year (FY) 2012 Regulatory Fees
Date Request Filed: Aug. 31, 2012
Fee Control No.: RROG-12-00014634

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver of the required Fiscal Year (FY) 2012 regulatory fee due for Station WNWK (AM). Our records reflect that Licensee has not paid the FY 2012 regulatory fee and Licensee did not submit a complete petition to defer payment; accordingly, for the reasons stated herein, we dismiss the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."³ For FY 2012, all broadcast facility licensees granted authorization on or before October 1, 2011, are required to pay the fees.⁴ The fee is an annual assessment, and the Commission does not pro-rata refund an annual fee.⁵ Moreover, even if paid, Licensee did not establish grounds under 47 C.F.R. § 1.1160 for a refund.

¹ Letter from David Tillotson, Esq., 4606 Charleston Terrace, N.W., Washington, DC 20007 to David Robbins, Managing Director, FCC, 445 Twelfth Street, SW, Washington, DC 20445, Request for Waiver of Regulatory Fees (Aug. 31, 2012) (*Request*) with two attachments (a) Eko Media Group Inc Profit & Loss, October 2011 through March 2012, (*Eko P&L*) and (b) letter from Son Nguyen, Supervisory Engineer, Media Bureau, FCC to James P. Riley, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th St., 11th Fl., Arlington, VA 22209-3801 (Aug. 30, 2001).

² 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

³ 47 C.F.R. § 1.1164; 47 U.S.C. § 159(c)(1).

⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2012, *Report and Order*, 27 FCC Rcd 8390, 8398, ¶ 30.

⁵ 47 C.F.R. § 1.1160(b).

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2012, the deadline was September 13, 2012.⁶

On August 31, 2012, Licensee submitted its *Request* asking the Commission to waive the FY 2012 regulatory fee on the grounds that it “turned in its license for WNWK for cancellation on March 9, 2012,” and because Licensee “suffered an operating loss of \$13,718” from October 1, 2011, to the date the license was submitted for cancellation.⁷ These are not valid grounds to waive collection of the fee.

As noted, Licensee is required to pay the regulatory fee because it held its authorization on or before October 1, 2011. Our rules do not excuse a regulatee from paying the fee simply because it surrenders its license after that date, but before the date for paying the fee. Rather, as Licensee acknowledges, the proper procedure is to ask for a waiver of the fee in a manner that complies with our rule at 47 C.F.R. § 1.1166. That rule sets forth procedures, including the requirement that the regulatee must either pay the fee (which will be returned, if the waiver is granted⁸) or submit a petition to defer payment due to financial hardship supported by documentation of the financial hardship. The consequence of noncompliance with that procedure is dismissal, *i.e.*, our rule provides, “[w]aiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”⁹ Licensee failed to include either the required fees and forms or a properly supported petition to defer payment. Accordingly, under 47 C.F.R. §§ 1.1164(e) and 1.1166(c), we dismiss the *Request*. Moreover, Licensee is a delinquent debtor because it failed to pay the fee or submit a proper petition to defer payment before the fee payment deadline. This ends the matter, and even if we consider the content of the financial information, we would deny the *Request* and the result is unchanged. In that regard, as a courtesy, we discuss below why both the *Request* is insufficient to be construed as a petition to defer payment, and the five month *Eko P&L* fails to document Licensee’s financial hardship. Moreover, Licensee failed to establish that the public interest will be served by waiving the fee.

⁶ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012) (“Filers must ensure that their regulatory fee payments are RECEIVED at the Commission’s St. Louis, Missouri address by 11:59 PM on September 13, 2012, Eastern Daylight Time, to avoid incurring a 25 percent late-payment penalty, along with interest and other fees.”); Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET), *Public Notice*, DA 12-1423 (Aug. 31, 2012), 27 FCC Rcd 10297 (2012).

⁷ *Request* at 1.

⁸ See 47 C.F.R. § 1.1160(a)(3) (“Regulatory fees will be refunded, upon request, only in the following instances: ... When a waiver is granted in accordance with § 1.1166.”).

⁹ 47 C.F.R. § 1.1166(c).

First, Licensee has the burden to make its case.¹⁰ Here Licensee failed to petition for deferment, and we are unable to stretch the body of Licensee's single *Request* into that required pleading. This procedural shortcoming is enough to deny the *Request*, and the content of the submitted financial information does not alter the outcome. Specifically, Licensee's summary assertion of a five month operating loss and its brief *Eko P&L* do not meet the Commission's standard requiring "each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹¹ As an example, and not a detailed analysis of the information reported on the *Eko P&L*, the information falls short of information on a balance sheet, cash flow statement, or other required relevant financial records. Furthermore, entries on the *Eko P&L* raise questions as to its accuracy, e.g., Licensee reported expending \$55,000.00 for "Gastos de Capital," but failed either to translate the Spanish term or to explain the purpose of the expense. Without more, Licensee left us to conclude that the English translation of the Spanish phrase, *gastos de capital*, is the phrase, capital expenditure, an accounting term. Entry items reporting capital expenditures are not part of a profit and loss statement. Rather, because capital expenditures benefit the company over multiple periods, they are reported as assets on the balance sheet, not expenses on the profit and loss statement. Without supporting documentation verifying the nature of the expenditure to be different from a capital expenditure, we conclude that \$55,000.00 is reported incorrectly as an expense, which results in an error in the calculations of total expense and net income. Thus, Licensee's information does not substantiate a net loss. Indeed, because it appears the entry is misplaced, our recalculation indicates Licensee has substantial funds to pay the regulatory fees. Finally, not only did Licensee fail to establish financial hardship, it failed to establish the essential second element that the public interest will be served by waiving the fee.¹²

Because the Commission did not receive Licensee's payment or a proper petition to defer payment by the specified date, the Commission assessed the mandatory statutory 25% penalty¹³ and additional required charges of interest, penalties, and charges of collection.¹⁴ Until the delinquent fees and accrued charges are paid in full, under 47 C.F.R. §§ 1.1164(e) and 1.1910(b), any filing is subject to dismissal.

Licensee is delinquent in paying the FY 2012 regulatory fees, statutory penalty, and accrued statutory charges. That amount may increase as charges continue to accrue. If Licensee does not pay the full amount of the debts, we will assess additional interest and penalties, and under the law,¹⁵ apply debt collection procedures.¹⁶

¹⁰ See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

¹¹ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995).

¹² 47 C.F.R. § 1.1166.

¹³ 47 U.S.C. § 159(c)(1), 47 C.F.R. § 1.1164.

¹⁴ 31 U.S.C. § 3717, 47 C.F.R. § 1.1940.

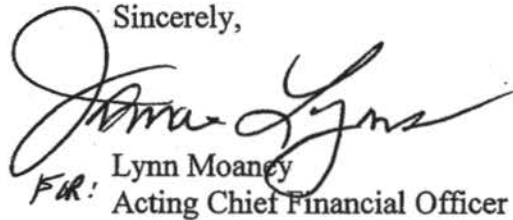
¹⁵ See 47 C.F.R. § 1.1901, *et seq.*

¹⁶ See 31 C.F.R. § 3717.

Because Licensee is delinquent in paying a debt owed the United States, we are notifying Licensee that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted¹⁷ until it pays the debt or makes other satisfactory arrangements.¹⁸ If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



F.R. Lynn Mooney
Acting Chief Financial Officer

¹⁷ See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission"); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

¹⁸ See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").